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10

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CHRISTOPHER KAZUO KAMON,

17 Defendant.  
18

No. CR 23-47-JLS-2

CR 23-24-JLS-1

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S CLAIMED BREACH OF THE  
PLEA AGREEMENT

Hearing Date: April 11, 2024

Location: Courtroom of the  
Hon. Josephine L.  
Staton

19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorney Scott Paetty, hereby  
22 files its opposition to defendant Christopher Kamon's claimed breach  
23 of the plea agreement in the above referenced cases. (Dkt. Nos. 471  
24 and 96.)

25 This opposition is based upon the attached memorandum of points  
26 and authorities, the presentence report, the files and records in  
27  
28

1 this case, and such further evidence and argument as the Court may  
2 permit.

3 Dated: April 8, 2025

Respectfully submitted,

4 BILAL A. ESSAYLI  
United States Attorney

5 LINDSEY GREER DOTSON  
6 Assistant United States Attorney  
7 Chief, Criminal Division

8 /s/  
SCOTT PAETTY  
9 Assistant United States Attorney

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The government did not breach the plea agreement in its recent  
4 sentencing memorandum in the above cases. The government's  
5 sentencing position, which was filed after defendant Christopher  
6 Kamon ("defendant") advocated for a significantly below guidelines  
7 sentence in his objections to the presentence report, included  
8 numerous references to mitigating facts and repeatedly asserted that  
9 a low-end guidelines sentence is appropriate here. Defendant now  
10 alleges three grounds for his claimed breach, none of which have  
11 merit. Defendant claims: (1) that the government impermissibly  
12 contested facts stated in the plea agreement related to loss and the  
13 zero-point offender reduction, (2) the government's inclusion of a  
14 victim impact statement from the Girardi Keese bankruptcy trustee  
15 amounted to an adoption of the trustee's loss claims, and (3) alleged  
16 "inflammatory language" in the government's submission contradicted  
17 its low-end guidelines recommendation. (Dkt. 471 at 5-7.)<sup>1</sup>

18 Defendant's arguments fail for the following reasons. First,  
19 consistent with the plea agreement, the government expressly  
20 requested that the Court adopt the government's recommended guideline  
21 loss range and did not adopt the PSR's loss findings. Second, the  
22 government's inclusion of a victim impact statement from the Girardi  
23 Keese trustee was required to comply with its obligations under the  
24 Crime Victims Rights Act ("CVRA") and did not result in an adoption  
25 of any factual statements therein. Finally, any references to the

26  
27 <sup>1</sup> Citations are to the docket in case number 23-47-JLS and  
28 reference the pagination in the CM/ECF header. These filings and  
paginations are the same as the corresponding filings in case number  
23-24-JLS.

1 severity of defendant's criminal conduct were appropriate to justify  
2 the government's low-end recommendation of 121 months custody, which  
3 is a significant difference from defendant's 30-month recommendation.

4 In sum, the government did not commit either a plain or implicit  
5 breach of the plea agreement but instead adhered both to the letter  
6 and the spirit of the agreement. Defendant's objection should be  
7 rejected.

## 8 **II. RELEVANT FACTS**

9 Defendant pleaded guilty pursuant to a plea agreement on October  
10 11, 2024. (Dkt. 406.) In relevant part, defendant's plea agreement  
11 reflected the parties' agreement that loss was between \$3.5 million  
12 and \$25 million (equating to a Guidelines loss enhancement of +18 or  
13 +20), but otherwise allowed the parties to "argue that additional  
14 specific offense characteristics, adjustments, and departures under  
15 the [Guidelines} are appropriate" and reserved the parties' right to  
16 argue for a sentence outside the Guidelines range. (Dkt. 398 ¶¶ 13-  
17 14.)

18 The United States Probation & Pretrial Services Office  
19 ("Probation") subsequently issued a presentence report ("PSR") which  
20 calculated defendant's total offense level at 32, in part based on a  
21 finding that defendant's offense conduct caused losses in excess of  
22 \$25 million. (Dkt. 441 ¶¶ 106-110.) Defendant filed objections to  
23 the Presentence Report in which, among other things, he challenged  
24 Probation's and the government's loss findings and guidelines  
25 calculations and proposed a total offense level of 26 and  
26 corresponding Guidelines range of 63-78 months. (Dkt. 444 ¶¶ 5-6.)  
27 Defendant filed a sentencing memorandum requesting a downward  
28 variance to 30 months custody. (Dkt. 456.)

1 The government's sentencing memorandum advocated for a low-end  
 2 guidelines sentence of 121 months based on a total offense level of  
 3 32.<sup>2</sup> (Dkt. 454 at 18.) The government referenced Probation's loss  
 4 finding but also reiterated that defendant should be given the  
 5 benefit of the reduced guidelines range in his plea agreement. (Id.  
 6 at 14.) The government also included an under-seal victim impact  
 7 statement from the Girardi Keese bankruptcy trustee, the victim of  
 8 defendant's "side fraud" scheme.<sup>3</sup> (Dkt. 462.)

9 Defendant has now filed an objection to the government's  
 10 sentencing position alleging that the government's sentencing  
 11 memorandum breached the plea agreement. (Dkt. 471.)

### 12 **III. LEGAL STANDARDS**

13 "Plea agreements are contracts, and the government is held to  
 14 the literal terms of the agreement." United States v. Johnson, 187  
 15 F.3d 1129, 1134 (9th Cir. 1999). Under Ninth Circuit law, a breach  
 16 may be explicit or implicit. An explicit breach occurs when the  
 17 government breaches the "literal terms of the plea agreement"—i.e.,  
 18 by explicitly recommending a sentence other than the one agreed upon.  
 19 United States v. Alcala-Sanchez, 666 F.3d 571, 575 (9th Cir. 2012).  
 20 In contrast, an implicit breach occurs where the government agrees  
 21 "to recommend a particular sentence while also making statements [to  
 22 the court] that serve no practical purpose but to advocate for a  
 23 harsher one." United States v. Heredia, 768 F.3d 1220, 1231 (9th  
 24 Cir. 2014). In other words, the government cannot promise to make a

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25  
 26 <sup>2</sup> Probation filed a revised PSR that calculated defendant's  
 27 total offense level as 34, based on a rejection of the zero-point  
 28 offender reduction. (Dkt 465 at 5, ¶¶ 131-133, Dkt. 466 at 1.) The  
 government stands by its position that the proper offense level  
 should be 32.

<sup>3</sup> The side fraud scheme was charged in 23-CR-24-JLS.

1 particular recommendation “while winking at the district court to  
2 impliedly request a different outcome.” Id. (cleaned up).

3 In cases involving an implicit breach claim, courts must look  
4 first to the plain language of the plea agreement. As long as the  
5 agreement does not expressly prohibit the government from responding  
6 to a defendant’s request for a sentence lower than what is  
7 recommended by the government, the government has the latitude to  
8 respond. In other words, as a default rule, the government can  
9 respond even if the plea agreement is silent on the issue. United  
10 States v. Farias-Contreras, 104 F.4th 22, 30-31 (9th Cir. 2024).

#### 11 **IV. ARGUMENT**

##### 12 **A. The Government’s Arguments on Loss and Zero-Point Offender** 13 **Did Not Breach the Plea Agreement**

14 The government honored its obligations in the plea agreement  
15 related to loss and the zero-point offender Guideline provision. The  
16 government agreed to recommend that loss be cabined to +20 under  
17 Guidelines § 2B1.1(b) (1) (K). (Dkt. 398 ¶ 13.) The government  
18 repeatedly so recommended in its sentencing memorandum. (See, e.g.,  
19 Dkt. 454 at 14 (“The government recommends that defendant be given  
20 the benefit of the bargain in the plea agreement, which caps  
21 defendant’s guidelines loss enhancement at +20 (for loss between \$9.5  
22 million and \$25 million”), 21-22 (“As discussed above, defendant  
23 should be given the benefit of his bargain related to loss in his  
24 plea agreement and, thus, the government respectfully requests that  
25 defendant’s loss amount for guidelines purposes should be limited to  
26 below \$25,000,000.”) Therefore, then (as now) the government adhered  
27 to its recommendation that defendant’s guidelines loss enhancement be  
28 limited to +20 (for loss between \$9.5 million and \$25 million).

1       The government's reference to the PSR's loss calculations do not  
2 constitute breach. Far from it. The government is permitted to  
3 acknowledge that the PSR's loss calculations are correct—and defend  
4 the PSR's methodology—as long it stands by the stipulation in the  
5 plea agreement, which it did. See United States v. Maldonado, 215  
6 F.3d 1046, 1051-52 (9th Cir. 2000). Moreover, contrary to  
7 defendant's assertions, nowhere in its sentencing memorandum did the  
8 government adopt Probation's loss calculations.

9       Furthermore, the plea agreement did not obligate the government  
10 to argue for a zero-point offender reduction. Rather, it stated that  
11 both parties "reserve the right to argue that additional specific  
12 offense characteristics, adjustments, and departures under the  
13 Sentencing Guidelines are appropriate." (Dkt. 398 ¶ 13.) Thus, it  
14 was not a breach of the plea agreement to oppose the reduction. See  
15 United States v. Shineflew, 2022 WL 2257019, at \*1 (9th Cir. 2022)  
16 (unpublished) (concluding that government did not breach plea  
17 agreement by advocating for role enhancement because "the Plea  
18 Agreement gave both parties the freedom to support or oppose any  
19 Guidelines calculation that was outside of those expressly set forth  
20 in the Agreement, and because the Agreement did not expressly  
21 restrict either party from arguing for other appropriate  
22 adjustments").

23       That Probation agreed with the government's recommendation and  
24 did not apply the zero-point offender reduction in the revised PSR  
25 has no bearing on the breach argument. (See Dkt. 398 ¶¶ 25-26 ("the  
26 Court and [Probation] are not parties to this agreement", and "both  
27 defendant and the [government] are free to supplement the facts by  
28 supplying relevant information to [Probation] and the Court".))

1 Moreover, the government has consistently affirmed that whatever  
2 offense level the Court applies, defendant should be sentenced to the  
3 low-end of that range.

4 **B. Inclusion of the Girardi Keese Bankruptcy Trustee's Victim**  
5 **Impact Statement Did Not Breach the Plea Agreement**

6 Defendant's claim that the government's inclusion of the Girardi  
7 Keese bankruptcy trustee's impact statement constituted an adoption  
8 of the loss claims made therein is inaccurate. (Dkt. 96 at 5.)  
9 Nowhere in its sentencing memorandum does the government adopt the  
10 trustee's loss finding as it relates to American Express card charges  
11 made by the defendant. As defendant notes, the government did not  
12 argue that all of those charges were fraudulent during the trial of  
13 co-defendant Girardi. And it does not so argue here either. Indeed,  
14 the trustee's letter was referenced only once in the government's  
15 sentencing memorandum and was not included in the section that  
16 discussed loss. Far from being improperly included with the  
17 government's sentencing position, the trustee's letter was a  
18 necessary component of the proceedings and required by statute. (See  
19 Dkt. 454 at 30 (the trustee's letter "is provided to the Court  
20 pursuant to the government's obligations under the Crime Victims  
21 Rights Act."); see also United States v. Klassy, 409 F. App'x 169,  
22 172 (9th Cir. 2011) (citing United States v. Nazifpour, 944 F.2d 472,  
23 474 (9th Cir. 1991) ("bankruptcy trustee may properly be considered a  
24 victim because he collects fees based on the size of the estate").

25 Such impact statements vindicate a victim's "right to be  
26 reasonably heard at any public proceeding in the district court," 18  
27 U.S.C. § 3771(a)(4), which includes a victim's right to speak at  
28 sentencing hearings. Kenna v. U.S. Dist. Ct. for C.D. Cal., 435 F.3d



1 1011, 1016 (9th Cir. 2006). It encompasses "the right of the victims  
2 to look this defendant in the eye and let him know the suffering his  
3 misconduct has caused." Id. at 1017 (emphasis in original). The  
4 government submitted this statement in accord with a victim's  
5 statutory rights under the CVRA. Id. at 1016-17; see also United  
6 States v. Maggio, 499 F. App'x 696, 697-98 (9th Cir. 2012).

7 Furthermore, the plea agreement also expressly provided that the  
8 parties were free to "supplement the facts by supplying relevant  
9 information to . . . the Court." (Dkt. 398 ¶ 26.) And regardless of  
10 the government's agreement as to a sentencing recommendation, it was  
11 "obligated to reveal to the sentencing judge pertinent factual  
12 information." United States v. Read, 778 F.2d 1437, 1442 (9th Cir.  
13 1985).

14 **C. The Government's Inclusion of Facts Supporting Its**  
15 **Recommended Sentence Was Not Breach**

16 The government was also consistent in recommending a sentence at  
17 the low-end of defendant's guideline range and included facts that  
18 supported its low-end recommendation while also highlighting  
19 mitigating evidence. Indeed, the government reiterated its low-end  
20 recommendation and discussed mitigating facts no fewer than nine  
21 times in its sentencing memorandum. (See Dkt. 454 at 7, 18, 23-28.)

22 To the extent defendant raises an implicit breach argument based  
23 on the inclusion of aggravating facts related to his offense conduct,  
24 the government is permitted to mention such facts, particularly when  
25 it constitutes "a fair response to [d]efendant's request for a  
26 downward variance from the low-end of the advisory Guidelines range."  
27 United States v. Moschella, 727 F.3d 888, 892 (9th Cir. 2013). Here,  
28 defendant's objections to the PSR included arguments that

1 significantly undercut Probation's Guidelines calculations and varied  
2 significantly downward from the government's calculations. (See Dkt.  
3 444 at 5-6.) These calculations were included as a predicate for  
4 defendant's argument for a 30-month custodial sentence. (Compare  
5 Dkt. 444 at 8 ("defendant believes that such a change [in Guidelines  
6 calculations] is necessary in order to comply with the 'sufficient  
7 but not greater than necessary' mandate of the Sentencing Act.") with  
8 Dkt. 456 at 7 (advocating for a 30-month custodial sentence).)  
9 Ultimately, inclusion of certain aggravating facts, balanced by  
10 mitigating factors, were necessary to support a Guidelines sentence  
11 here -- particularly, where the low end of defendant's Guideline  
12 range is a significant (121 month) sentence and where a sentence  
13 below defendant's Guidelines range is inadequate to achieve the goals  
14 of sentencing set forth in §3553(a).

15 Defendant's reliance on United States v. Farias-Contreras, 104  
16 F.4th 22 (9th Cir. 2024) is misplaced. Indeed, Farias-Contreras was  
17 an en banc affirmance for the government which, in any event,  
18 involved very different facts. In Farias-Contreras, the government  
19 made "several inflammatory arguments" in its sentencing memorandum -  
20 such as, including general statistics on drug overdose deaths,  
21 pejorative references to drug users and drug dealers, and then  
22 asserted at the sentencing hearing that the government was not sure  
23 "what to do" with this defendant. Farias-Contreras, 104 F.4th 28-29  
24 (cleaned up). The facts are much different here. Namely, the  
25 government has been consistent in its recommendations regarding  
26 sentencing and did not include references to aggravating facts  
27 outside the record in this case.

1 Similarly, this case also lacks the contradictory or duplicitous  
2 conduct by the government that was present in Whitney, another case  
3 relied on by defendant. (See Dkt. 471 at 6.) In Whitney, the plea  
4 agreement precluded the defendant "from requesting a below-guidelines  
5 sentence, and he did not do so." United States v. Whitney, 673 F.3d  
6 965, 971 (9th Cir. 2012). The government there included statements  
7 about the defendant's criminal history that "could only have been  
8 intended as an argument for greater than the within-guidelines  
9 sentence requested by the defense." Id. at 971. However, the plea  
10 agreement here contained no such restriction on defendant's ability  
11 to argue for a below-guidelines sentence and, indeed, defendant has  
12 done so. Moreover, defendant has no prior criminal history and the  
13 government has not made any arguments about his propensity for  
14 criminal conduct beyond the facts of his conduct here.

15 The government's recommendation therefore reflects a balanced  
16 approach in support of its low-end recommendation, citing aggravating  
17 factors in response to defendant's demand that the district court  
18 vary below the guideline range and mitigating factors as  
19 justification for not going above the low-end. See also United  
20 States v. Johnson, 187 F.3d 1129, 1135 (9th Cir. 1999) ("[U]nless  
21 specifically required in the agreement, the government need not make  
22 the agreed-upon recommendation enthusiastically.").

23 //

1 **V. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests  
3 that the Court reject defendant's breach claim and reiterates its  
4 recommendation that defendant be sentenced to 121 months in custody,  
5 the low-end of the Guidelines range, based on a total offense level  
6 of 32.

7 Dated: April 8, 2025

Respectfully submitted,

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12 /s/  
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1 The undersigned, counsel of record for the government, certifies  
2 that this brief contains 2,367 words, which complies with the word  
3 limit of L.R. 11-6.1.

4 Dated: April 8, 2025

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